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Jianhua Fan
APT. C-2
5800 MAUDINA AVE.
NASHVILLE TN 37209

In re Application of :
Jianhua Fan :
Application No. 10/050,661 : DECISION ON PETITION
Filed: January 16, 2002 :
Attorney Docket No. :

This is a decision on the renewed petition, filed November 16, 2007, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to reply to the final Office action mailed June 9, 2005, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on December 28, 2005. Petitioner asserts that the Office action dated June 9, 2005 was not received.

This is a renewed petition under 37 CFR 1.181, the prior petition dated November 27, 2006 was dismissed in a decision mailed August 21, 2007. That petition was dismissed because petitioner failed to provide statements, documentary evidence or an explanation of his method for tracking due dates for filing responses to communications from the USPTO.

The renewed petition includes a "State & Action" list which appears to be an application log (petitioner has many applications before the Office). There are two entries for the instant application, the first entry noting an Office action of 5/26/04 with a response date of 6/21/04 and a second entry noting an Office action dated 11/4/04 with a "due" date of 2/22/05. These are the only two entries for the instant application and there were at least eleven (11) Office communications mailed out which set a response time. There was a notice of noncompliant

amendment mailed March 2, 2005 which petitioner responded to but, neither the notice or the response is recorded in petitioner's list. Therefore the list is clearly deficient in establishing complete mailing and response records. The rest of the list notes were to various other applications with some noting just a status or incomplete listings for Office communications. The renewed petition fails to provide any explanation of this State & Action list and does not describe how it was used to ensure timely responses to Office actions. The renewed petition does not discuss any other methods petitioner may have used to track responses from the Office.

The renewed petition fails to provide the necessary documentary evidence or explanation of methods for tracking due dates, as noted in the petition decision mailed August 21, 2007. Therefore, the petition to withdraw the holding of abandonment must be dismissed.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an “unintentionally” abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was “unavoidable.” This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An “unintentional” petition under 37 CFR 1.137(b) must be accompanied by the \$770 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

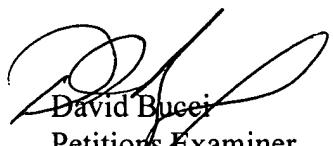
Further correspondence with respect to this matter should be addressed as follows:

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Telephone inquiries concerning this decision should be directed to Carl Friedman at (571) 272-6842.



David Bucei
Petitions Examiner
Office of Petitions